Poon,[3] Thomson J. (as he then was) said (at p. 185) :—

"Construing para. (j) (of section 13(1) of the Control of Rent Ordinance, 1948,) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 *per cent* of the rent paid by him to the landlord."

In *Hooi Moon* v. *Suppiah Chettiar,*[4] the tenant had reduced the rent that he was collecting from his sub-tenant to within the legal maximum before the ejectment proceedings were started but subsequent to a notice to quit. It was argued that the words "receives . . . rent." in paragraph (j) of section 13(1) of the Control of Rent Ordinance, 1948, related to the time when ejectment proceedings were started. Spenser Wilkinson J. in rejecting this argument said (at p. 187) :—

"If the provisions of paragraph (j) are construed in the manner suggested by Mr. Ong Huck Lim the result would be as far as I can see that a tenant could charge his sub-tenants as much rent as he chose providing that he reduced the rent before ejectment proceedings had actually been started against him in court. Where a statute is not clear it is permissible to look at the possible results of different constructions in order to see what the intention of the Legislature was. In my opinion it could not have been the intention of the Legislature to allow a tenant to make a profit out of his sub-tenants and then to retain that profit by the simple expedient of reducing the rent when he was threatened by the landlord with ejectment."

Good J. in the case of *Wong Yue* v. *Lim Teng Kooi,*[5] followed the opinion of Thomson J. in the case of *Woon Guat Chin* v. *Lim Sian Poon,* which was set out above.

In the case of *Wong Miew Choong* v. *Loh Fatt,*[6] the tenant had been ordered to give up possession of the premises by the sessions court as he had contravened the provisions of paragraph (j) of section 12(1) of the Control of Rent Ordinance, 1956, of Malaya and he appealed on the ground that at the date when the contractual tenancy was determined he was not receiving in respect of the portion of the premises sublet by him any sum exceeding by more than 10% the rent of the whole premises so as to entitle the landlord to possession. Ong Hock Thye J. (as he then was) said, at p. 220 :—

"The learned president in this case felt he was bound to follow the decision in *Wong Yue* v. *Lim Teng Kooi* and in my view he was entirely correct in doing so."

The statement of Murray-Aynsley C.J. in *Ida Fernandez* v. *Murugiah,* relied on by counsel for the defendants to support his submission, is *obiter* and in any case it seems to us that that statement was expressed in terms that are too wide and cannot be applied to every case where a plaintiff is seeking to recover possession under the provisions of section 15(1) of the Ordinance. In our view the opinion of Thomson J. in the case of *Wong Guat Chin* v. *Lim Sian Poon* is a correct one. The learned judge was therefore correct in holding that a landlord's right of action for recovery of possession arises immediately upon the tenant subletting at a rent in excess of the maximum permitted under paragraph (g) of section 15(1) of the Ordinance.

For these reasons we dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Chor Pee & Hin Hiong; S. K. Lee.*

PUBLIC PROSECUTOR v. GOH KEE CHUAN

[A.Cr.J. (Ong Hock Sim J.) November 16, 1966]

[Penang — Criminal Appeal No. 13 of 1966]

Criminal Law and Procedure — Trial — Preliminary objection on procedural ground — Whether magistrate has power to acquit without hearing evidence.

The accused had been charged for the offence of failing to have an attendant at the rear of his vehicle for the purpose of signalling overtaking traffic, which was one of the conditions of the haulage permit issued to him. At the trial defence counsel raised the preliminary objection that the notice which was required to be annexed to the summons under section 146(3) of the Road Traffic Ordinance, 1958, was not so annexed. The learned magistrate acquitted and discharged the accused.

Held: a magistrate has no power to acquit and discharge an accused person upon a preliminary objection. without hearing evidence on behalf of the prosecution.

Cases referred to:—

(1) *Queen* v. *Hughes* (1878-79) 4 Q.B.D. 614.

(2) *Public Prosecutor* v. *Liew Choo Kwong & Ors.* [1962] M.L.J. 382.

(3) *Kuppusamy* v. *Public Prosecutor* [1948] M.L.J. 25.

MAGISTRATE'S CRIMINAL APPEAL.

Haji Suhaimi bin Dato' Kamaruddin (Deputy Public Prosecutor) for the appellant.

Yeap Ghim Guan for the respondent.

Ong Hock Sim J. (delivering oral judgment): In this case I allow the appeal and set aside the order of acquittal and discharge made by the learned magistrate at Butterworth upon a preliminary objection taken by defence counsel that the notice which was, under section 146(3) of the Road Traffic Ordinance, 1958, to be annexed to the summons issued for an offence against the Ordinance which was compoundable under section 147 was not so annexed. Upon such preliminary objection, it is my view that the magistrate has no power whatsoever to acquit and discharge, not having heard any evidence on behalf of the prosecution. If it is construed that the notice is mandatory, that may invalidate the summons but it does not affect the jurisdiction of the magistrate to try a person for an offence if it is one within his competence. *The Queen* v. *Hughes* [1] and the case of *Public Prosecutor* v. *Liew Choo Kwong & Ors.*[2] clearly say that once

an accused person is before the court and the court has jurisdiction to try the particular offence it should not concern itself with how the accused has been brought before the court. I would urge magistrates to bear in mind the case of *Kuppusamy* v. *Public Prosecutor* (3) where Murray-Aynsley J. said:—

"I think it is clear that the earliest stage at which a magistrate can acquit an accused person is after hearing all the evidence for the prosecution."

Upon preliminary objections such as this which only affect procedure, for a magistrate without hearing any evidence to acquit and discharge is going too far.

I leave it to the learned deputy public prosecutor whether he wishes to proceed upon the charge that has been framed. That was for failing to have an attendant at the rear of the vehicle for the purpose of signalling overtaking traffic — one of the conditions of the haulage permit. One sees many heavy vehicles on the road today so constructed or otherwise covered up with tarpaulin that no attendant could be so posted at the rear of the vehicle and the charge would seem to be somewhat hard to justify.

Appeal allowed.

Solicitors: *Khoo & Yeap.*

CHAN EN CHENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ismail Khan J.) November 25, 1966]

[Malacca — Criminal Appeal No. 11 of 1966]

Criminal Law and Procedure — Joint trial — Persons charged with retaining stolen property at different times and at different places — Properties stolen at same time — Whether joint trial of the accused proper — Criminal Procedure Code (Cap. 21), ss. 173 & 179.

The appellant and another accused were charged with offences of retaining stolen property, each of them at a different time and at a different place. The properties were however the subject of the same theft and the accused persons were jointly tried and convicted. On appeal it was contended that the joint trial of the accused was illegal.

Held: the joint trial in the case was illegal and the convictions must be set aside.

Cases referred to:—

(1) *Nadasen* v. *Public Prosecutor* [1952] M.L.J. xxiii.

(2) *Manikam & Anor.* v. *Public Prosecutor* [1947] M.L.J. 90.

(3) *R.* v. *Assim* [1966] 2 All E.R. 881.

(4) *Shakur* v. *Emperor* A.I.R. 1935 Oudh. 475.

(5) *Mst. Guljania* v. *Emperor* A.I.R. 1928 Patna 38.

(6) *Abdul Majid* v. *Emperor* (1906), I.L.R. 33 Cal. 1256.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph for the appellant.

Abu Talib bin Othman (Deputy Public Prosecutor) for the respondent.

Cur. Adv Vult.

Ismail Khan J.: The appellant and one Bong Foo (hereinafter called the other accused) were originally charged with having committed robbery on 7th November, 1965, at about 3.10 a.m. at 127, Jalan Temenggong, Malacca. At the close of the case for the prosecution, the charge was amended as against the appellant, to read as follows:—

"That you on 7.11.65 at about 5 a.m. at Jalan Tranquerah, Malacca, in the State of Malacca, dishonestly retained stolen property, to wit, a transistor radiophonogram belonging to Bong Kwee Lian having reason to believe the same to be stolen property and that you thereby committed an offence punishable under section 411 of the Penal Code."

and as against the other accused, Bong Foo, to read:—

"That you on 7.11.65 at about 3.10 a.m. at the backlane between Bunga Raya Road and Wolferstan Road, Malacca in the State of Malacca, dishonestly retained stolen property, to wit, a Parker fountain pen and a Tudor wristwatch belonging to Ng Kim Swee having reason to believe the same to be stolen property and you thereby committed an offence punishable under section 411 of the Penal Code."

The case for the prosecution was that on 7th November, 1965, the complainant was awakened in his bedroom at about 3 a.m. by some noise coming from an adjoining room. He got up and went to the hall. There in the dim light from the bedroom he saw two persons ransacking his safe. He shouted. One of the intruders stabbed him in the groin. The two then escaped. He found his wristwatch (P2) and a fountain pen (P3) missing, and also a radiophonogram (P5) which belonged to his wife. On the same day at 3.10 a.m. a detective stopped the other accused, Bong Foo, at a backlane behind the Capitol Theatre and recovered P2 and P3 from his trouser pocket and a screw driver tucked between his trousers and left hip. Later at 5 a.m. a police corporal on duty at Jalan Tranquerah stopped the appellant. He was carrying a bag and in the bag was P5. The appellant said he bought P5 two months before. The other accused said he bought P2 and P3 from a stranger that night.

Both the appellant and the other accused were convicted and sentenced to nine months' imprisonment each. Only the appellant has appealed against his conviction and sentence.

The main ground of appeal is directed against the joint trial of the appellant and the other accused. It was contended for the appellant that as the two were distinct offences in respect